

TRAVELERS CASUALTY AND SURETY COMPANY as
Administrator for RELIANCE INSURANCE
COMPANY,

Plaintiffs,

-against-

DORMITORY AUTHORITY - STATE OF NEW YORK,
TDX CONSTRUCTION CORP. and KOHN PEDERSON
FOX ASSOCIATES, P.C.,

Defendants.

**ANSWER TO AMENDED
FOURTH PARTY COMPLAINT
AND CROSS-CLAIMS**

Civil Action No.
07-cv-6915

**Defendant Demands
Trial by Jury**

-----X
DORMITORY AUTHORITY OF THE STATE OF NEW
YORK and TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

-against-

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

-----X
TRATAROS CONSTRUCTION, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

-against-

CAROLINA CASUALTY INSURANCE COMPANY;
BARTEC INDUSTRIES, INC.; DAYTON SUPERIOR
SPECIALTY CHEMICAL CORP. a/k/a DAYTON
SUPERIOR CORPORATION; SPECIALTY
CONSTRUCTION BRANDS, INC. t/a TEC; KEMPER
CASUALTY INSURANCE COMPANY d/b/a KEMPER
INSURANCE COMPANY; GREAT AMERICAN
INSURANCE COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, P.S.;
UNITED STATES FIRE INSURANCE COMPANY;
NORTH AMERICAN INSURANCE COMPANY; ALLIED

Fourth-Party Defendants.

-----X

Defendant NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS
SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY,
by its attorney SMITH MAZURE DIRECTOR WILKINS YOUNG & YAGERMAN,
P.C. as and for its answer to the complaint and as and for its
cross-claims, upon information and belief, sets forth as follows:

Parties Jurisdiction and Venue:

1. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraphs of the amended fourth party complaint herein designated
as: "1".

2. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraphs of the amended fourth party complaint herein designated
as: "2"

3. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraphs of the amended fourth party complaint herein designated
as: "3"

as: "4".

5. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "5".

6. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "6".

7. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "7".

8. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "8".

9. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "9".

paragraphs of the amended fourth party complaint herein designated as: "10".

11. Defendant admits the allegations contained in the paragraph of the amended fourth party complaint designated as: "11".

12. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "12".

13. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "13".

14. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "14".

15. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "15".

as: "16".

17. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "17"

Interested Non-Parties

18. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "18".

19. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "19".

Procedural Background

20. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "20".

21. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

22. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "22".

23. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "23".

24. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "24".

25. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "25".

26. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "26".

27. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

28. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "28".

29. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "29".

30. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "30".

Facts Common to all Counts

31. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "31".

32. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "32".

paragraphs of the amended fourth party complaint herein designated as: "33".

34. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "34".

35. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "35".

36. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "36".

37. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "37".

38. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "38".

paragraphs of the amended fourth party complaint herein designated as: "39".

40. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "40".

41. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "41".

42. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "42".

43. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "43".

44. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "44".

as: "45".

46. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "46".

47. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "47".

48. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "48".

49. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "49".

50. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "50".

as: "51".

52. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "52".

53. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "53".

54. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "54".

55. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "55".

56. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "56".

paragraphs of the amended fourth party complaint herein designated as: "57".

58. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "58".

59. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "59".

60. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "60".

61. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "61".

62. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "62".

63. As and for its response to each and every allegation contained in paragraph "63" of the amended fourth-party complaint, the third-party defendant repeats, reiterates, and realleges each and every admission, denial, and allegation heretofore made with the same force and effect as if set forth at length hereat.

64. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "64".

65. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "65".

66. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "66".

67. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "67".

paragraphs of the amended fourth party complaint herein designated as: "68".

69. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "69".

70. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "70".

71. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "71".

Second Count

72. As and for its response to each and every allegation contained in paragraph "72" of the amended fourth party complaint, the fourth party defendant repeats, reiterates, and realleges each and every admission, denial, and allegation heretofore made with the same force and effect as if set forth at length hereat.

73. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "74".

75. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "75".

76. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "76".

77. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "77".

78. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "78".

contained in paragraph "79" of the amended fourth complaint, the fourth party defendant repeats, reiterates, and realleges each and every admission, denial, and allegation heretofore made with the same force and effect as if set forth at length hereat.

80. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "80".

81. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "81".

82. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "82".

83. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "83".

84. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

85. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "85".

Fourth Count

86. As and for its response to each and every allegation contained in paragraph "86" of the amended fourth party complaint, the fourth-party defendant repeats, reiterates, and realleges each and every admission, denial, and allegation heretofore made with the same force and effect as if set forth at length hereat.

87. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "'87".

88. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "88".

89. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "89".

90. As and for its response to each and every allegation contained in paragraph ``90" of the amended fourth party complaint, the fourth party defendant repeats, reiterates, and realleges each and every admission, denial, and allegation heretofore made with the same force and effect as if set forth at length hereat.

91. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "91".

92. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "92".

93. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "93".

94. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "94".

96. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "96".

97. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "97".

Sixth Count

98. As and for its response to each and every allegation contained in paragraph "98" of the amended fourth party complaint, the fourth-party defendant repeats, reiterates, and realleges each and every admission, denial, and allegation heretofore made with the same force and effect as if set forth at length hereat.

99. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "99".

100. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

101. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "101".

102. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "102".

103. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "103".

104. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "104".

105. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "105".

contained in paragraph "106" of the amended fourth party complaint,
the fourth-party defendant repeats, reiterates, and realleges each
and every admission, denial, and allegation heretofore made with
the same force and effect as if set forth at length hereat.

107. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "107"

108. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "108".

109. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "109".

110. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "110".

111. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the

112. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "112".

113. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "113".

Eighth Count

114. As and for its response to each and every allegation contained in paragraph "114" of the amended fourth party complaint, the fourth party defendant repeats, reiterates, and realleges each and every admission, denial, and allegation heretofore made with the same force and effect as if set forth at length hereat.

115. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "115".

116. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "116".

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paragraph of the amended fourth party complaint herein designated
as: "117".

118. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "118".

119. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "119".

120. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "120".

121. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "121".

122. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "122".

contained in paragraph "123" of the amended fourth party complaint,
the fourth party defendant repeats, reiterates, and realleges each
and every admission, denial, and allegation heretofore made with
the same force and effect as if set forth at length hereat.

124. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "124".

125. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "125".

126. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "126".

127. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the
paragraph of the amended fourth party complaint herein designated
as: "127".

128. Denies any knowledge or information sufficient to form
a belief as to the truth of the allegations contained in the

129. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "129".

130. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "130".

131. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "131".

132. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "132".

133. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "133".

134. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

135. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "135".

136. Denies each and every allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "136".

137. Denies each and every allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "137" as to North American Specialty and denies any knowledge or information sufficient to form a belief as all other entities and refers all issues of law to this Honorable Court.

138. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "138".

139. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "139".

140. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

141. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "141".

142. Denies each and every allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "142" as to setting forth that North American Specialty Insurance Company issued, without limitations, certain insurance policies and denies knowledge or information sufficient to form a belief as to any other entity and refers all issues of law to this Honorable Court.

143. Denies each and every allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "143" as to North American Specialty Insurance Company and denies knowledge or information to form a belief as to any other entity and refers all issues of law to this Honorable Court.

144. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "144".

145. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the

a belief as to the truth of the allegations contained in the paragraph of the amended fourth party complaint herein designated as: "146"

147. Denies each and every allegations contained in the paragraphs of the amended fourth party complaint herein designated in the paragraph of the amended fourth party complaint as: "147" as to North American Specialty Insurance Company and denies any knowledge or information sufficient to form a belief as to other insurer and refers all issues of law to this Honorable Court.

148. Denies each and every allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "148" as to North American Specialty Insurance Company and denies any knowledge or information sufficient to form a belief as to other insurer and refers all issues of law to this Honorable Court.

149. Denies each and every allegations contained in the paragraphs of the amended fourth party complaint herein designated in the paragraph of the amended fourth party complaint as: "148" as to North American Specialty Insurance Company and denies any knowledge or information sufficient to form a belief as to other insurer and refers all issues of law to this Honorable Court.

151. Denies each and every allegations contained in the paragraphs of the amended fourth party complaint herein designated as: "151".

FIRST AFFIRMATIVE DEFENSE:

The Complaint fails to state a claim upon which relief may be granted against NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a justiciable controversy as to NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY.

THIRD AFFIRMATIVE DEFENSE

To the extent the plaintiffs claim to be an insured or claim any other entity, including but not limited to Dormitory Authority State of New York to be an insured under the NORTH AMERICAN SPECIALTY INSURANCE COMPANY policy, their claims are barred as a result of their failure to provide timely and proper notice of the underlying occurrence or the litigation brought against NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY and otherwise comply with the conditions set forth in the NORTH AMERICAN SPECIALTY INSURANCE

FOURTH AFFIRMATIVE DEFENSE

To the extent that all conditions precedent and subsequent to the triggering of any obligation of liability, coverage, and/or a duty to defend, if any, under the NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy at issue herein have not been fulfilled, NORTH AMERICAN SPECIALTY INSURANCE COMPANY has no obligation to the plaintiffs and/or entity claiming to be an insured thereunder.

FIFTH AFFIRMATIVE DEFENSE

Some or all of plaintiffs' claims against NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY are or may be barred in whole or in part by laches, waiver, estoppel and/or the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Some or all of plaintiffs' claims against NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY are or may be barred in whole or in part by release and/or accord and satisfaction.

SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY are or may be barred in whole or in part by applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs may have failed to join parties necessary to the adjudication of this action.

NINTH AFFIRMATIVE DEFENSE

To the extent that some or all of the circumstances alleged do not constitute an "occurrence", were not fortuitous or were "expected" or "intended" from the standpoint of the insured, as those terms are used and defined in the NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy, coverage is precluded.

TENTH AFFIRMATIVE DEFENSE

The NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy herein excludes coverage for reimbursement of payments made by or on behalf of any person or entity claiming to be an insured hereunder without the consent of NORTH AMERICAN SPECIALTY INSURANCE COMPANY.

TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy, they are not entitled to any coverage thereunder.

TWELFTH AFFIRMATIVE DEFENSE

The NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy provides no coverage for, loss or damage which constitutes, represents, or arises out of fines, penalties or punitive or exemplary damages.

THIRTEENTH AFFIRMATIVE DEFENSE

Any recovery against NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY must be reduced to the extent plaintiffs have failed to mitigate, minimize or avoid its claimed damages.

FOURTEENTH AFFIRMATIVE DEFENSE

NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY liability, if any, under the NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy herein does not attach unless and until any and all underlying limits and coverages have been exhausted by payment of losses and any and all underlying self-insured retentions and/or

~~FIFTEENTH AFFIRMATIVE DEFENSE~~

To the extent that any entity claiming to be an insured has failed to perform all of its obligations under the NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy at issue herein, any recovery thereunder may be barred.

SIXTEENTH AFFIRMATIVE DEFENSE

Some or all of the claims at issue may be barred in whole or in part by the limits of liability, endorsements, and other terms, conditions, limitations and exclusions in the NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by reason of the existence of other insurance policies, including policies with respect to which NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY policy were previously, subsequently or contemporaneously effective, and by reason of the "other insurance" condition in the NORTH AMERICAN SPECIALTY INSURANCE COMPANY policy.

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by plaintiff is covered under the NORTH AMERICAN SPECIALTY
INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL
UNDERWRITERS INSURANCE COMPANY policy at issue herein, such loss is
subject to the applicable limits of liability of such policy.

NINETEENTH AFFIRMATIVE DEFENSE:

To the extent that the occurrence to be covered did not
occur during the policy period of any insurance issued by NORTH
AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO
COMMERCIAL UNDERWRITERS INSURANCE COMPANY, no coverage would be
owed.

TWENTIETH AFFIRMATIVE DEFENSE:

To the extent that the allegations against plaintiff falls
outside the scope of the insuring agreement, and including but not
limited to breach of contract delay damages, no coverage is owed.

TWENTY-FIRST AFFIRMATIVE DEFENSE

NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN
INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY may have
additional defenses that cannot be articulated due to the
generality of the Complaint, the failure of any person or entity to
provide information regarding this matter beyond the Complaint
and/or the stage of this litigation, Accordingly, NORTH AMERICAN
SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL

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plaintiffs particularize their claims, and after discovery of information concerning the matters set forth in the Complaint.

TWENTY SECOND AFFIRMATIVE DEFENSE

To the extent that any aspect of the claim would be excluded as noted in the declination letter issued and dated July 20, 2005 to Trataros Construction, no coverage would be owed.

TWENTY THIRD AFFIRMATIVE DEFENSE

To the extent that any portion of the claim is expected or intended injury contractual liability, damage to your work, damage to impaired property and/or damage to property not physically injured as defined by the policy of insurance, no coverage is owed.

TWENTY FOURTH AFFIRMATIVE DEFENSE

To the extent that the allegations, occurrence or damages do not occur within the applicable policy period, no coverage is owed.

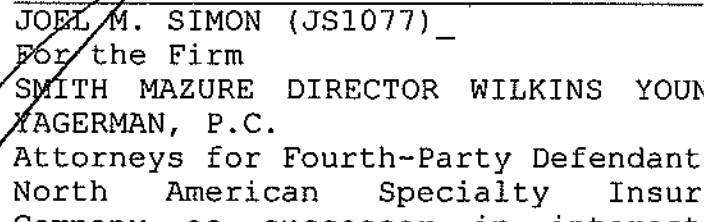
ANSWER TO CROSS-CLAIMS

NORTH AMERICAN SPECIALTY INSURANCE COMPANY AS SUCCESSOR IN INTEREST TO COMMERCIAL UNDERWRITERS INSURANCE COMPANY, by way of answer to any cross-claims filed or to be filed by any other defendant, denies each and every such claim in its entirety.

Dated: New York, New York
May 12, 2008

SMITH MAZURE DIRECTOR WILKINS YOUNG &
YAGERMAN, P.C.

By:


JOEL M. SIMON (JS1077) _
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North American Specialty Insurance
Company as successor in interest to
Commercial Underwriters Insurance
Company.
111 John Street, 20th Floor
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(212) 964-7400
Our File No. NAS-00285/JMS

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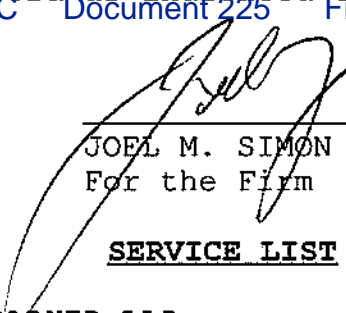
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Case 1:07-cv-06915-DLC Document 225 Filed 05/20/2008 Page 39 of 43
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Harleysville Mutual Insurance Company (a/k/a Harleysville Insurance
Company)

TRAVELERS CASUALTY AND SURETY COMPANY as Administrator for RELIANCE INSURANCE COMPANY,

Plaintiffs,

-against-

DORMINTORY AUTHORITY - STATE OF NEW YORK, TDX CONSTRUCTION CORP. and KOHN PEDERSON FOX ASSOCIATES, P.C.,

Defendants.

Third and fourth party actions

ANSWER

**SMITH MAZURE DIRECTOR WILKINS
YOUNG & YAGERMAN, P.C.**

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NAS-00285/JMS

CERTIFICATION PURSUANT TO 22 N.Y.C.R.R. §130-1.1a

hereby certifies that, pursuant to 22 N.Y.C.R.R. §130-1.1a, the foregoing is not frivolous nor frivolously presented.

Dated: New York, New York

PLEASE TAKE NOTICE

- ☐ that the within is a true copy of a _____ entered in the office of the clerk of the within named Court on _____.
- ☐ that a _____ of which the within is a true copy will be presented for settlement to the Hon. _____ one of the judges of the within named Court at _____, on at 9:30 a.m.

**SMITH MAZURE DIRECTOR WILKINS YOUNG &
YAGERMAN, P.C.**

Attorneys for Fourth-Party Defendants
North American Specialty Insurance Company As
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Our File No. NAS-00285/JMS